

**PROPOSED MODIFICATIONS TO THE PROPOSED REGULATION ORDER,
MADE AVAILABLE FOR SUPPLEMENTAL PUBLIC COMMENT**

**AMENDMENTS TO THE CALIFORNIA REFORMULATED GASOLINE
REGULATIONS TO POSTPONE IMPOSITION OF THE CaRFG3 STANDARDS AND
THE PROHIBITION OF MTBE AND OXYGENATES OTHER THAN ETHANOL IN
CALIFORNIA GASOLINE FROM DECEMBER 31, 2002 TO DECEMBER 31, 2003**

Note: The preexisting regulation text is set forth below in normal type. The originally proposed amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions. The subsequent modifications proposed by staff are shown in double underline to indicate additions and ~~double strikeout~~ to indicate deletions. Only the text containing proposed modifications is shown. The symbol “* * * * *” is used to indicate that unmodified parts of the original proposed regulation order have been omitted. Subsection headings in italics and bold are to be italicized when printed in Barclays California Code of Regulations. Commentaries explaining the rationale for modifications are shown in bracketed italics; they are not part of the regulations.

Amend title 13, California Code of Regulations, sections 2261, 2262, 2262.4, 2262.5, 2262.6, 2262.9, 2265, 2266.5, 2269, 2271, 2272, and 2296 to read as follows.

Section 2261. Applicability of Standards; Additional Standards.

(a) *Applicability of the CaRFG Phase 2 Standards.*

(1) (A) Unless otherwise specifically provided, the CaRFG Phase 2 cap limit standards set forth in section 2262, and the CaRFG Phase 2 cap limit compliance requirements in sections 2262.3(a), 2262.4(a), and 2262.5(a) and (b), shall apply:

1. starting April 15, 1996 to all sales, supplies, offers or movements of California gasoline except for transactions directly involving:
 - a. the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility, or
 - b. the delivery of gasoline from a bulk plant to a retail outlet or bulk purchaser-consumer facility, and
2. starting June 1, 1996 to all sales, supplies, offers or movements of California gasoline, including transactions directly involving the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility.

(B) The remaining CaRFG Phase 2 standards and requirements contained in this subarticle shall apply to all sales, supplies, or offers of California gasoline occurring on or after March 1, 1996.

(2) The CaRFG Phase 2 cap limit standards in section 2262 shall not apply to transactions directly involving the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility, where the person selling, offering, or supplying the gasoline demonstrates as an affirmative defense that the exceedance of the pertinent standard was caused by gasoline delivered to the retail outlet or bulk purchaser-consumer facility prior to April 15, 1996, or delivered to the retail outlet or bulk purchaser-consumer facility directly from a bulk plant prior to June 1, 1996.

(b) *Applicability of the CaRFG Phase 3 Standards.*

(1) (A) Unless otherwise specifically provided, the CaRFG Phase 3 cap limit standards set forth in section 2262, and the CaRFG Phase 3 cap limit compliance requirements in 2262.3(a), 2262.4(a), and 2262.5(a) and (b), shall apply starting December 31, ~~2002~~ 2003. The CaRFG Phase 3 benzene and sulfur content cap limit standards in section 2262, and the CaRFG Phase 3 benzene and sulfur content cap limit compliance requirements in 2262.3(a), shall apply:

1. starting December 31, ~~2002~~ 2003 (for the benzene content cap limit and the 60 parts per million sulfur content cap limit) and December 31, ~~2004~~ 2005 (for the 30 parts per million sulfur content cap limit), to all sales, supplies or offers of California gasoline from the production facility or import facility at which it was produced or imported.
2. starting February 14, ~~2003~~ 2004 (for the benzene content cap limit and the 60 parts per million sulfur content cap limit) and February 14, ~~2005~~ 2006 (for the 30 parts per million sulfur content cap limit) to all sales, supplies, offers or movements of California gasoline except for transactions directly involving:
 - a. the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility, or
 - b. the delivery of gasoline from a bulk plant to a retail outlet or bulk purchaser-consumer facility, and
3. starting March 31, ~~2003~~ 2004 (for the benzene content cap limit and the 60 parts per million sulfur content cap limit) and March 31, ~~2005~~ 2006 (for the 30 parts per million sulfur content cap limit) to all sales, supplies, offers or movements of California gasoline, including transactions directly involving the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility.

(B) The remaining CaRFG Phase 3 standards and compliance requirements contained in this subarticle shall apply to all sales, supplies, or offers of California gasoline occurring on or after December 31, ~~2002~~ 2003.

- (2) The CaRFG Phase 3 benzene and sulfur content cap limit standards in section 2262 shall not apply to transactions directly involving the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility, where the person selling, offering, or supplying the gasoline demonstrates as an affirmative defense that the exceedance of the pertinent standard was caused by gasoline delivered to the retail outlet or bulk purchaser-consumer facility prior to February 14, ~~2003~~ 2004 (for the benzene content limit and the 60 parts per million sulfur content limit) or February 14, ~~2005~~ 2006 (for the 30 parts per million sulfur content limit) or delivered to the retail outlet or bulk purchaser-consumer facility directly from a bulk plant prior to March 31, ~~2003~~ 2004 (for the benzene content limit and the 60 parts per million sulfur content limit) or March 31, ~~2005~~ 2006 (for the 30 parts per million sulfur content limit).

[Commentary: The modifications to section 2261(b) postpone, by one year, the date for the reduction of the CaRFG3 sulfur content cap limit from 60 parts per million (ppm) to 30 ppm to make it consistent with the proposed one-year delay for implementation of the other CaRFG3 gasoline specifications. Staff had intended to propose a one-year postponement of the applicable dates of all CaRFG3 cap limit compliance requirements to be consistent with the proposed one-year delay of the prohibition of MTBE. However, due to an oversight, the date for the reduction of the sulfur cap limit from 60 ppm to 30 ppm was left unchanged in the proposed regulation text.]

* * * *

NOTE: Authority cited: sections 39600, 39601, 43013, 43013.1, 43018, and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 43000, 43013, 43013.1, 43016, 43018, 43101, and 43830.8, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

Section 2262. The California Reformulated Gasoline Phase 2 and Phase 3 Standards.

The CaRFG Phase 2 and CaRFG Phase 3 standards are set forth in the following table. For all properties but Reid vapor pressure (cap limit only) and oxygen content, the value of the regulated property must be less than or equal to the specified limit. With respect to ~~The~~ the Reid vapor pressure cap limit and the oxygen content flat and cap limit, the limits are expressed as a range, and the Reid vapor pressure and oxygen content must be less than or equal to the upper limit, and more than or equal to the lower limit. A qualifying small refiner may comply with the small refiner CaRFG Phase 3 standards, in place of the CaRFG Phase 3 standards in this section, in accordance with section 2272.

The California Reformulated Gasoline Phase 2 and Phase 3 Standards

<i>Property</i>	<i>Flat Limits</i>		<i>Averaging Limits</i>		<i>Cap Limits</i>	
	<i>CaRFG Phase 2</i>	<i>CaRFG Phase 3</i>	<i>CaRFG Phase 2</i>	<i>CaRFG Phase 3</i>	<i>CaRFG Phase 2</i>	<i>CaRFG Phase 3</i>
Reid Vapor Pressure ¹ (pounds per square inch)	7.00	7.00 or 6.90 ²	Not Applicable	Not Applicable	7.00 ³	6.40 - 7.20
Sulfur Content (parts per million by weight)	40	20	30	15	80	60 ⁴
						30 ⁴
Benzene Content (percent by volume)	1.00	0.80	0.80	0.70	1.20	1.10
Aromatics Content (percent by volume)	25.0	25.0	22.0	22.0	30.0 ³	35.0
Olefins Content (percent by volume)	6.0	6.0	4.0	4.0	10.0	10.0
T50 (degrees Fahrenheit)	210	213	200	203	220	220
T90 (degrees Fahrenheit)	300	305	290 ⁵	295	330	330
Oxygen Content (percent by weight)	1.8 - 2.2	1.8 - 2.2	Not Applicable	Not Applicable	1.8 ⁶ - 3.5	1.8 ⁶ -3.5 ⁷
					0 ⁶ - 3.5	0 ⁶ - 3.5 ⁷
Methyl tertiary-butyl ether (MTBE) and oxygenates other than ethanol	Not Applicable	Prohibited as provided in § 2262.6	Not Applicable	Not Applicable	Not Applicable	Prohibited as provided in § 2262.6

¹ The Reid vapor pressure (RVP) standards apply only during the warmer weather months identified in section 2262.4.

² The 6.90 pounds per square inch (psi) standard flat limit applies only when a producer or importer is using the evaporative emissions model element of the CaRFG Phase 3 Predictive Model, in which case all predictions for evaporative emissions increases or decreases made using the evaporative emissions model are made relative to 6.90 psi and the gasoline may not exceed the maximum RVP cap limit of 7.2 psi. Where the evaporative emissions model element of the CaRFG Phase 3 Predictive Model is not used, the RVP of gasoline sold or supplied from the production or import facility may not exceed 7.0 psi

³ For sales, supplies, or offers of California gasoline downstream of the production or import facility starting on the date on which early compliance with the CaRFG Phase 3 standards is permitted by the executive officer under

section 2261(b)(3), the CaRFG Phase 2 cap limits for Reid vapor pressure and aromatics content shall be 7.20 psi and 35.0 percent by volume respectively.

4 The CaRFG Phase 3 sulfur content cap limits of 60 and 30 parts per million are phased in starting December 31, ~~2002~~ 2003, and December 31, ~~2004~~ 2005, respectively, in accordance with section 2261(b)(1)(A).

5 Designated alternative limit may not exceed 310.

6 The 1.8 percent by weight minimum oxygen content cap only applies during specified winter months in the areas identified in section 2262.5(a).

7 If the gasoline contains more than 3.5 percent by weight oxygen but no more than 10 volume percent ethanol, the maximum oxygen content cap is 3.7 percent by weight.

NOTE: Authority cited: sections 39600, 39601, 43013, 43013.1, 43018, 43101, and 43830, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 43000, 43013, 43013.1, 43016, 43018, 43101, 43830, and 43830.8, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

[Commentary: The modification of the starting date for the phase-in of the 30 ppm sulfur cap limit reflects the modifications in section 2261(b)(1) and 2261(b)(2).]

Section 2262.4. Compliance With the CaRFG Phase 2 and CaRFG Phase 3 Standards for Reid Vapor Pressure.

(a) *Compliance with the cap limits for Reid vapor pressure.*

(1) No person shall sell, offer for sale, supply, offer for supply, or transport California gasoline which exceeds the applicable cap limit for Reid vapor pressure within each of the air basins during the regulatory period set forth in section (a)(2).

(2) *Regulatory Control Periods.*

(A) *April 1 through October 31 (May 1 through October 31 in ~~2003~~ 2003 and 2004):*

South Coast Air Basin and Ventura County

San Diego Air Basin

Mojave Desert Air Basin

Salton Sea Air Basin

[Commentary: Under the modifications to section 2262.4(b) below, some gasoline supplied from Southern California production and import facilities may be exempt from the RVP standards in March 2003 as well as in March 2004. It is accordingly necessary to make the downstream cap limits inapplicable in April 2003 as well as in April 2004, to maintain the one month lag period between when

compliance is required at the production and import facilities and when it is required downstream.]

(B) *May 1 through September 30:*

Great Basin Valley Air Basin

(C) *May 1 through October 31:*

San Francisco Bay Area Air Basin

San Joaquin Valley Air Basin

Sacramento Valley Air Basin

Mountain Counties Air Basin

Lake Tahoe Air Basin

(D) *June 1 through September 30:*

North Coast Air Basin

Lake County Air Basin

Northeast Plateau Air Basin

(E) *June 1 through October 31:*

North Central Coast Air Basin

South Central Coast Air Basin (Excluding Ventura County)

(b) *Compliance by producers and importers with the flat limit for Reid vapor pressure.*

(1) *Reid vapor pressure standard for producers and imports.*

(A) In an air basin during the regulatory control periods specified in section (b)(2), no producer or importer shall sell, offer for sale, supply, or offer for supply from its production facility or import facility California gasoline which has a Reid vapor pressure exceeding the applicable flat limit set forth in section 2262 unless the gasoline is supplied from the production or import facility on or after March 1, 2003 2004 and has been reported as a PM alternative gasoline formulation pursuant to section 2265(a) using the evaporative emissions model element of the CaRFG Phase 3 Predictive Model.

(B) In an air basin during the regulatory control periods specified in section (b)(2), no producer or importer shall sell, offer for sale, supply, or offer for supply from its production facility or import facility California gasoline which has been reported as a PM alternative gasoline formulation pursuant to section 2265(a) using the evaporative emissions model element of the CaRFG Phase 3 Predictive Model if the gasoline has a Reid vapor pressure exceeding the PM flat limit for Reid vapor pressure in the identified PM alternative specifications.

[Commentary: These post-hearing modifications clarify how Reid vapor pressure

(RVP) limits are to apply when the evaporative emissions element of the CaRFG Phase 3 Predictive Model is used, given the seasonality of the RVP standards. The modifications are designed to reflect the common understanding and assumptions of how the RVP standards are intended to be applied in the CaRFG Phase 3 gasoline program.

Two drafting errors are corrected in the modifications to section 2262.4(b)(1)(A). First, the preexisting language did not take into account that producers and importers have the option to specify alternative RVP limits using the CaRFG3 Predictive Model before March 2004. Second, the preexisting language did not account for the fact that unless the evaporative emissions model element is used, all California gasoline subject to CaRFG Phase 3 Predictive Model alternative specifications will remain subject to the 7.00 pounds per square inch (psi) flat limit for RVP during the applicable RVP season.

The addition of section 2262.4(b)(1)(B) is designed to clearly identify the seasonal applicability of the RVP limits when the evaporative emissions model element of the CaRFG3 Predictive Model is used. A producer or importer using the evaporative emission element may vary the alternative specification for RVP from as low as 6.40 psi to as high as 7.2 psi. The modifications make clear that where the evaporative emissions model element of the CaRFG3 Predictive Model is used, the RVP specifications for producers and importers only apply during the RVP regulatory control periods for production and import facilities. They accordingly are also subject to the exceptions in section 2262.4(c).]

(2) Regulatory control periods for production and import facilities.

(A) 1. March 1 through October 31 (~~April 1 through October 31 in 2003~~ ~~2004~~ Except as otherwise provided in (A)2. and (A)3. below):

South Coast Air Basin and Ventura County
San Diego Air Basin
Mojave Desert Air Basin
Salton Sea Air Basin

2. In the areas identified in section 2262.4(b)(2)(A)1., California gasoline that is supplied March 1 through March 31, 2003 from a production or import facility that is qualified under this subsection is not subject to the prohibitions of section 2262.4(b)(1), as long as the gasoline either is designated as subject to the CaRFG Phase 3 standards, or is subject to the CaRFG Phase 2 standards and also meets the prohibitions in sections 2262.6(a)(1) and 2262.6(c) regarding the use of oxygenates. In order for a production or import facility to be qualified, the producer or importer must notify the Executive Officer in writing by

February 14, 2003 that it has elected to have the facility be subject to this subsection during March 2003.

3. In the areas identified in section 2262.4(b)(2)(A)1., California gasoline that is supplied March 1 through March 31, 2004 from a production or import facility that was not qualified under section 2262.4(b)(2)(A)2. is not subject to the prohibitions of section 2262.4(b)(1).

[Commentary: The current CaRFG3 regulations delay the start of the 2003 RVP regulatory control season in Southern California by one month to allow production and import facilities flexibility to make the transition from MTBE gasoline to ethanol gasoline and comply with RVP standards. In the originally proposed amendments in this rulemaking, staff proposed that applicability of this one-time delay be postponed to 2004 to maintain that flexibility and make the date consistent with the one-year postponement of the MTBE phase-out. The proposed modifications make this flexibility available to production and import facilities that comply with the original phase-out schedule.

Post-hearing modifications provide more detail on how this mechanism is to apply. First, a producer or importer will need to affirmatively elect to have a production or import facility subject to the one-month delay in March 2003 rather than March 2004, so that it is clear when the one-month delay is applying. Second, the producer or importer is expressly limited to use of the mechanism in one of the two years, since it was not intended for these modifications to expand the total number of March days in which the RVP limit will not apply at a production or import facility. Third, where producer or importer elects to have the one-month delay in the RVP standard apply to a production or import facility in March 2003, it will only apply to CaRFG3 or CaRFG2 produced without the use of MTBE or other oxygenates other than ethanol. The underlying rationale for the delay is to assist in the transition from gasoline containing MTBE to gasoline subject to the MTBE prohibition (and containing ethanol, at least in federal RFG areas under current federal requirements). Therefore it would be inappropriate to allow a producer or importer to use the delay in March 2003 for CaRFG2 containing MTBE.]

(B) April 1 through September 30:

Great Basin Valley Air Basin

(C) April 1 through October 31:

San Francisco Bay Area Air Basin

San Joaquin Valley Air Basin

Sacramento Valley Air Basin

Mountain Counties Air Basin

Lake Tahoe Air Basin

(D) *May 1 through September 30:*

North Coast Air Basin

~~North Central Coast Air Basin~~

Lake County Air Basin

Northeast Plateau Air Basin

(E) *May 1 through October 31:*

North Central Coast Air Basin

South Central Coast Air Basin (Excluding Ventura County)

~~North Coast Air Basin~~

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NOTE: Authority cited: sections 39600, 39601, 43013, 43013.1, 43018, and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 43000, 43013, 43013.1, 43016, 43018, 43101, 43830, and 43830.8, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

Section 2262.5. Compliance With the Standards for Oxygen Content.

(a) ***Compliance with the minimum oxygen content cap limit standard in specified areas in the wintertime.***

(1) Within the areas and periods set forth in section (a)(2), no person shall sell, offer for sale, supply, offer for supply, or transport California gasoline unless it has an oxygen content of not less than the minimum oxygen content cap limit in section 2262.

(2) (A) *November 1 through February 29:*

South Coast Area

Imperial County

(B) *October 1 through October 31, (1996 through ~~2002~~ ~~2003~~ 2002 only):*

South Coast Area

[Commentary: In the CaRFG3 rulemaking, the ARB eliminated the October oxygen requirement in the South Coast area after 2002 based on a demonstration that by that time the requirement would no longer be needed to assure that attainment of the federal carbon monoxide standard is maintained in that month. October is the one month in which the summertime Reid vapor pressure

standards and the wintertime oxygen requirements have overlapped. While it is less important to avoid this overlap if there is not yet an effective ethanol mandate, retaining the original phase-out of the October oxygen requirement after 2002 will provide useful flexibility for refiners, especially those who have decided to stop using MTBE sooner than will be required under the proposed amendments in this rulemaking. After the April 24, 2002 workshop, staff had intended to propose no change to the phase-out of the October oxygen requirement in the preexisting regulations, but left the date change in the proposed regulation text due to an oversight.]

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NOTE: Authority cited: sections 39600, 39601, 43013, 43013.1, 43018, and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 43000, 43013, 43013.1, 43016, 43018, 43101, and 43830.8, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

Section 2265. Gasoline Subject to PM Alternative Specifications Based on the California Predictive Model.

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(b) *Prohibited activities regarding PM alternative gasoline formulations.*

- (1) No producer or importer shall sell, offer for sale, supply, or offer for supply from its production or import facility California gasoline which is reported pursuant to section 2265(a) as a PM alternative gasoline formulation subject to PM alternative specifications if any of the following occur:
 - (A) The identified PM alternative specifications do not meet the criteria for approval in the applicable Predictive Model Procedures; or
 - (B) The producer was prohibited by section 2265(c) from electing to sell or supply the gasoline as a PM alternative gasoline formulation; or
 - (C) The gasoline fails to conform with any PM flat limit in the identified PM alternative specifications (see section 2262.4(b) in the case of specifications for Reid vapor pressure); or
 - (D) With respect to any property for which the producer or importer has identified a PM averaging limit,

1. the gasoline exceeds the applicable PM average limit, and no designated alternative limit for the property has been established for the gasoline in accordance with section 2264(a); or

2. a designated alternative limit for the property has been established for the gasoline in accordance with section 2264(a), and either of the following occur:

a. The gasoline exceeds the designated alternative limit for the property, or

b. Where the designated alternative limit for the property exceeds the PM averaging limit, the exceedance is not fully offset in accordance with the applicable provisions in section 2264(c).

[Commentary: The post-hearing change to section 2265(b)(1)(C), in conjunction with the post-hearing changes to section 2262.4(b), assures that when the CaRFG3 Predictive Model is used, the RVP specifications apply during the RVP season only.]

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NOTE: Authority cited: sections 39600, 39601, 43013, 43013.1, 43018, and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 41511, 43000, 43013, 43013.1, 43016, 43018, and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).